

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER HUDSON, in)	X
his individual capacity on behalf of himself)	
and others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 1:18-cv-4483
)	
NATIONAL FOOTBALL LEAGUE)	
MANAGEMENT COUNCIL, NATIONAL)	
FOOTBALL LEAGUE PLAYERS)	
ASSOCIATION, RETIREMENT BOARD)	
OF THE BERT BELL/PETE)	
ROZELLE NFL PLAYER RETIREMENT)	
PLAN, KATHERINE "KATIE" BLACKBURN,)	
RICHARD "DICK" CASS, TED PHILLIPS,)	
SAMUEL MCCULLUM, ROBERT SMITH)	
AND JEFFREY VAN NOTE,)	
)	
Defendants.)	
	X	

CONFIDENTIALITY STIPULATION AND ORDER

Plaintiff Christopher Hudson and Defendants National Football League Management Council, National Football League Players Association, Retirement Board of The Bert Bell/Pete Rozelle NFL Player Retirement Plan, Katherine "Katie" Blackburn, Richard "Dick" Cass, Ted Phillips, Samuel McCullum, Robert Smith and Jeffrey Van Note, each a Party (collectively the "Parties") to the above-captioned action (the "Action"), agree and stipulate as follows:

1. *Confidential Information.* Any discovery or disclosure made in this Action (including any document, material or deposition testimony) that contains a trade secret or other proprietary or confidential information, "Protected Health

Information,”¹ or any information that is or may be protected under Rule 26(c) may be designated by any Party or Non-party (the “Designating Party”) as “Confidential” (collectively, “Confidential Information”) so long as such designation meets the requirements of this Order. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Confidential Information does not include information, documents or materials that (a) are in the public domain at the time of disclosure to a Receiving Party or become part of the public domain after disclosure to a Receiving Party as a result of publication not involving a violation of this Order; (b) are obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party, or (c) do not qualify as confidential under Rule 26(c).

2. *Designation.* The Designating Party shall identify Confidential Information by affixing to it, in a manner that shall not interfere with its legibility, the words “CONFIDENTIAL” on all or any part of the document or thing. Any summary, compilation or copy of any document or thing so designated as “CONFIDENTIAL” shall be treated as provided by this Stipulation and Order. The “CONFIDENTIAL” designation shall, wherever practicable, be made prior to, or contemporaneously with, production or disclosure, or in the case of depositions, shall be designated on the

¹ “Protected Health Information” specifically includes “protected health information” as such term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. See 45 C.F.R. §§ 164.501 and 160.103.

record.

3. *Use or Disclosure of Confidential Information.* Confidential Information will be used only for the purpose of prosecuting, defending, or settling the Action and shall be disseminated only to the following persons:

- (a) Parties;
- (b) Parties' counsel (or employees involved in prosecuting or defending the Action);
- (c) professionals, consultants or expert witnesses retained by the Parties or their counsel for the purposes of this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- (d) the Court and its personnel;
- (e) agreed-upon mediators;
- (f) service providers (such as copying services, court reporters, ESI discovery vendors) employed to assist the Parties and their counsel in prosecuting or defending the Action;
- (g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be specifically identified by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.
- (h) the author or recipient of a document containing the information, or a

custodian or other person for whom there is a good faith basis for believing the person was the author, recipient or otherwise possessed or knew the information.

(i) any other person agreed to by the Designating Party and who has signed the “Acknowledgment and Agreement to Be Bound” or as ordered by the Court.

4. *“Disseminate.”* For purposes of this Stipulation and Order, the term “disseminate” includes any facilitation of receipt or disclosure, or the actual transmission of information in tangible or intangible form, including summaries, thoughts, impressions, oral or written, or the failure to take reasonable precautions to prevent accidental disclosure of information.

5. *Filings with this Court.* To the extent that any document, testimony or other material designated as “CONFIDENTIAL” is to be filed with this Court, it shall be filed under seal with the Clerk of this Court pursuant to this Court’s procedures set forth at http://www.nysd.uscourts.gov/cases_records.php?records=sealed_records and/or as indicated in Judge Sweet’s Individual Rules of Practice. The mere inclusion of factual information derived from Confidential Information will not require filing under seal if that filing does not reveal the Confidential Information itself or if the Designating Party agrees in writing prior to filing that the factual information actually contained in that filing would not itself be properly subject to such designation.

6. *Distribution of Confidential Information Transcripts.* The portions of any deposition transcript that a Disclosing Party has designated on the record at the deposition as “CONFIDENTIAL” and any Confidential Information that is marked as a deposition

exhibit shall be treated as Confidential Information.

7. *Presentation of Confidential Information to this Court.* With respect to testimony elicited during hearings and other proceedings, whenever counsel for any Party deems that any question or line of questioning calls for the disclosure of Confidential Information, counsel may make an application to the Court for leave to designate on the record prior to such disclosure that the disclosure is “CONFIDENTIAL.”

8. *No Presumption of Protected Status.* This Stipulation and Order does not address discovery objections and does not preclude any Party from moving for any relief under the Federal Rules of Civil Procedure, the Federal Rules of Evidence or the Court’s inherent powers. Nothing in this Stipulation and Order creates a presumption or implies that information designated as Confidential Information actually constitutes a trade secret, or proprietary or otherwise protectable confidential information.

If a Party believes that any information is improperly designated under this Stipulation and Order, it may, at any time, contest such designation. In the event that another Party contests a designation, the burden shall be on the Designating Party to establish that the Confidential Information is entitled to protection under this Order, except that if the challenge is premised upon either an argument that the information was within the public domain (at the time of disclosure to a Receiving Party or after disclosure to a Receiving Party as a result of publication not involving a violation of this Order) or the Receiving Party received the Confidential Information from a source who obtained the information lawfully and under no obligation to keep the information

confidentiality, then the challenging party will have the initial burden to show the information was in the public domain or received from a source without an obligation of confidentiality and the Designating Party may rebut that showing or otherwise show the information remains Confidential. Confidential Information that is subject to such a dispute shall be treated consistently with its designation by the Disclosing Party until the Court orders otherwise.

9. *Inadvertent Disclosure of Confidential Information.* Inadvertent failure to identify documents or things as Confidential Information pursuant to this Stipulation and Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted **within** fifteen (15) days of the discovery of the inadvertent failure. In such event, the Designating Party will make arrangements to appropriately legend the information in accordance with this Stipulation and Order. A recipient of Confidential Information shall have no liability, under this Stipulation and Order or otherwise, for any disclosure of information contained in unlegended documents or things occurring before the recipient of the Confidential Information was placed on notice of the Designating Party's claim of confidentiality.

10. *Subpoena of Confidential Information.* If any non-party subpoenas or demands production from a recipient of Confidential Information, the recipient of such Confidential Information shall promptly notify the Disclosing Party of the subpoena or demand and shall not produce the information until the Disclosing Party has had reasonable time to object or take other appropriate steps to protect the information. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court

order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. *Unauthorized Disclosure of Confidential Information.* When counsel for any Party becomes aware of any violation of this Stipulation and Order, such counsel shall promptly report, with appropriate particulars to assist in aiding any investigation, to counsel for the Designating Party, and the Court, if appropriate, that there may have been a violation of this Stipulation and Order or such Confidentiality Agreement.

12. *Continuing Jurisdiction.* After the termination of the Action, the provisions of this Stipulation and Order shall continue to be binding until further order of the Court, and the Court shall retain jurisdiction over the Parties and any other person who has had access to Confidential Information pursuant to this Stipulation and Order or pursuant to a Confidentiality Agreement, in order to enforce the provisions of this Stipulation and Order or such Confidentiality Agreement.

13. *Duty to Destroy Confidential Information.* Within sixty (60) days after the termination of the Action (which will be defined as the later of judgment and the exhaustion of all appeals and further proceedings resulting therefrom or the distribution of all proceeds or other relief to the Class, whether by settlement or judgment, to any Class certified under Federal Rule of Civil Procedure Rule 23), all Confidential Information including any copies of documents or reproductions of things (except as set forth below),

shall be destroyed by each recipient of such Confidential Information. Upon written request by the Designating Party, counsel for any Party or non-party recipient of Confidential Information shall provide written certification of compliance with this provision to counsel for the Disclosing Party within fourteen (14) days of expiration of the request. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order

14. *No Waiver.* Nothing herein shall be construed as a waiver of any deponent's right to object to questions that may be asked of them at depositions conducted in this Action.

15. *Disclosure Required By Law.* Nothing herein shall prevent disclosure as required by law or compelled by order of any court of competent jurisdiction.

16. *Binding Agreement.* Upon execution, this Stipulation and Order is a binding agreement and may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

17. *Interpretation; Headings.* Should the Parties have any issues concerning the interpretation of this Stipulation and Order, they shall endeavor to promptly meet and confer to resolve the dispute before any Party moves for this Court's assistance. The headings used in this Stipulation and Order are supplied for convenience only and shall not be taken into account in the interpretation of this Stipulation and Order.

Dated: October 2, 2018

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“DICK” CASS, TED PHILLIPS, SAMUEL
MCCULLUM, ROBERT SMITH, AND
JEFFREY VAN NOTE*

SO ORDERED

HON. ROBERT W. SWEET, USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

)
CHRISTOPHER HUDSON, in his)
individual capacity on behalf of himself and)
others similarly situated,)
) No. 1:18-cv-4483-RWS
Plaintiff,)
)
v.)
)
NATIONAL FOOTBALL LEAGUE)
MANAGEMENT COUNCIL, et al.,)
)
Defendants.)
)

EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, declare under penalty of perjury as follows:

I have read and understand the Confidentiality Stipulation and Order (the “Stipulation and Order”) to which this Exhibit A is annexed (and whose definitions are incorporated herein) and I attest to my understanding that access to information designated as “CONFIDENTIAL” may be provided to me and that such access shall be pursuant to the terms and conditions and restrictions of the Stipulation and Order, I agree to be bound by the terms of the Stipulation and Order. I will not use or disclose to others, except in accordance with the Stipulation and Order, any Confidential Information. If I fail to abide by the terms of this Confidentiality Agreement or the Stipulation and Order, I understand that failure to comply may subject me to sanctions by the United States District Court for the Southern District of New York. I further agree to submit to the jurisdiction of the United States District Court for the Southern District of New York for the

purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Signature

Printed Name

Address

Address